

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 208 of 1996

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

MEHTA DHIRAJLAL J

Appearance:

MR ST MEHTA APP for Petitioner

MR NAGIN N GANDHI for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 20/09/2000

ORAL JUDGEMENT

This revision application under Section 397 read with Section 401 CrPC has been preferred by the State against the order dated 27th February, 1996 passed by the learned Chief Judicial Magistrate, Bhavnagar in Criminal

case no. 5218 of 1995.

Criminal Case no. 5218 of 1995 was registered against the accused Dhirajlal Jivrajbhai Mehta, pursuant to the complaint lodged by the Food Inspector in respect of the rice sold by the accused. It was alleged that the accused had sold 'Rice' from a bag which did not disclose Batch number, Lot number, etc. The accused was thus alleged to have sold misbranded goods in violation of Rule 32 (e) of the Prevention of Food Adulteration Rules, 1945. The accused had thus committed offence punishable under Section 16 (a) of the Essential Commodities Act, 1955. The accused filed an application Exh. 7 seeking discharge on the grounds : (a) the complaint was not filed within the period of limitation prescribed under Section 468 CrPC; (b) Rule 32 (e), contravention of which was alleged against the accused, had been declared ultra vires by the Hon'ble Supreme Court in the year 1971 and (c) Rule 32 of the Rules of 1955 would not apply to the commodity in question as 'Rice' is a primary food.

The learned Magistrate by his order dated 27th March, 1996 rejected the contention that complaint was not lodged within the period of limitation stipulated under Section 468 CrPC. However, it held that, the 'Rice' is a primary food. Rule 32, therefore, would not apply to the case and that no offence can be said to have been committed for violation of provision contained in Clause (e) of Rule 32 of the Rules of 1955. The learned Judge, therefore, was of the view that no case was made out against the accused, and accordingly dismissed the complaint in exercise of the power under Section 203 CrPC. Feeling aggrieved, the State has preferred the present Revision.

Mr. Mehta has submitted that since the judgment of the Hon'ble Supreme Court in the matter of Dwarkanath & Anr. v. Municipal Corporation of Delhi [AIR 1971 SC 1844], Rule 32 has undergone substantial change by an amendment dated 30th April, 1989. Since, by a Notification dated 29th April, 1987, Rule 32 has been substituted with effect from 29th April, 1989 and the ruling in the matter of Dwarkanath & Anr. [Supra] shall not apply. Be that as it may, Mr. Mehta is unable to satisfy that the paddy alone can be said to be a primary food and the 'Rice' cannot be said to be a primary food and Rule 32, therefore, shall apply in case of 'Rice' also. Since 'Rice' can be said to be a primary food, the question of application of Rule 32 would not arise. The accused, therefore, could not have been tried for the alleged offence of selling rice in contravention of

Clause (e) of Rule 32 of the Rules of 1955. The impugned order of the learned Magistrate, therefore, does not warrant interference.

Revision application is dismissed. Rule is discharged.

Prakash*